out of the contents of written representations made by a member of the public to Parliament concerning a Bill before a Select Committee, made in response to an invitation by the Clerk of Parliament, when the representor has not appeared before the Committee and given evidence in person. The question may arise at some time as to whether an unsolicited representation to a Select Committee attracts privilege. That is not a question I propose to address since it does not arise in this case, and could depend on special facts.

Lord Irvine submitted that the existence of parliamentary privilege is due to considerations of public policy, and when a question as to its extent arises, the answer depends upon a balancing by the court of the need to protect proceedings in Parliament with the need to protect citizens who have been wrongfully injured. He argued that it would therefore be consonant with public policy to hold that qualified privilege attaches in relation to written representations to a Select Committee; and that absolute privilege attaches only to oral evidence given by a witness physically present. It is good for democracy, said Lord Irvine, that Parliament should invite the public at large to make representations, but this opportunity for public consultation is open to abuse if the law is that every person who responds to Parliament's invitation to make written representations is thereby given carte blanche to defame without fear of consequences.

This was a theme to which Lord Irvine returned, in one form or another, at several points in his argument. In answer to it, I would say this. There was nothing before me to suggest that in Singapore written representations to Select Committees have been regarded by representors as charters to defame under the cloak of absolute privilege. Were that to happen, it would be reasonable to expect Parliament to enact legislation to define 'proceedings in Parliament' so as to exclude written representations to Select Committees in cases where the representor does not attend and give evidence in person.

Unless and until such legislation is passed into law in Singapore, it remains, in my judgment, in the overriding public interest that written representations to Parliament should attract absolute privilege, so that persons making them in the discharge of their rights should feel free to do so without being threatened with, or vexed by proceedings, whether they be civil or criminal.

It follows that I answer the preliminary question or issue affirmatively. Since that answer disposes of the plaintiffs' cause, and so renders the trial of this matter unnecessary, I dismiss the plaintiffs' claim. They must pay the defendant's costs of the action.

Order accordingly.

Solicitors: *Godwin & Co*; *Shook Lin & Bok*.

Reported by *Ng Sheau Jiuan*

Anthony Wee Soon Kim v The Law Society of Singapore

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 157 OF 1988
CHAN SEK KEONG JC
23 MAY 1988

Legal Profession – Complaint against solicitors making reckless allegations and failing in duty to verify those allegations of client – Dismissal of complaint by Council – Whether court has original jurisdiction to hear complaint – Standard of duty of solicitor to verify client's information – Legal Profession Act (Cap 161, 1985 Ed), s 93

Civil Procedure – Original jurisdiction of court to hear complaint against solicitor after Council's dismissal of the complaint – Whether there exists such jurisdiction – Legal Profession Act (Cap 161, 1985 Ed), s 93(4)

This was an application by the plaintiff made pursuant to s 93 of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act') for an order that the Law Society of Singapore be directed to apply to the Chief Justice for the appointment of a disciplinary committee to investigate the complaint of the plaintiff against two advocates and solicitors, GSH and TKQ. The substance of the complaint was that both GSH and TKQ made reckless allegations against the plaintiff and that TKQ as solicitor for GSH failed, inter alia, to verify the source of GSH's information.

The complaint was considered by the inquiry committee and the Law Society Council subsequently accepted the report of the inquiry committee that the complaint did not merit a formal investigation by a disciplinary committee. The plaintiff, being dissatisfied with the Council's determination, commenced the present proceedings.

Held, dismissing the application: (1) Section 93(4) of the Act does not vest in a judge original jurisdiction to hear a complaint against an advocate and solicitor. Section 93(4) does not contemplate such a hearing. The court has no jurisdiction to inquire into any complaint which has not been inquired into by the inquiry committee or where the Council has not made a determination on the basis of such an inquiry. The court's jurisdiction is only supervisory or appellate in nature.

(2) The plaintiff has available to him other remedies against a defaulting inquiry committee or Council, eg an order of mandamus against the inquiry committee or the Council, or a declaratory order.

(3) In respect of the complaint against TKQ that he made libellous statements against the plaintiff recklessly, the Council's determination in dismissing it could not be challenged since the plaintiff did not and could not challenge the findings of fact.

(4) In respect of the complaint that TKQ failed to take steps to verify the truth of those statements, the Council's determination in dismissing it is also affirmed. It is not for an advocate and solicitor to believe or disbelieve his client's instructions, unless he himself has personal knowledge of the matter or unless his client's statements are inherently incredible or logically impossible. His duty to his client does not go beyond advising him of the folly of making incredible or illogical statements.

Cases referred to

1 *Re An Advocate & Solicitor* [1987] 2 MLJ 21 (refd)
2 *P Suppiah* v *The Law Society of Singapore* [1986] 1 MLJ 459 (CA) (refd)

Legislation referred to
Legal Profession Act (Cap 161, 1985 Ed) s 93(4)

Mak Kok Weng for the plaintiff.
Goh Joon Seng for the Law Society.

Cur Adv Vult

Chan Sek Keong JC: This was an application by the plaintiff made pursuant to s 93 of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act') for an order that the Law Society of Singapore be directed to apply to the honourable Chief Justice for the appointment of a disciplinary committee to investigate the complaint dated 17 November 1987 of the plaintiff against two advocates and solicitors, viz Mr Goh Soon Hock (GSH) and Mr Tan Kok Quan (TKQ).

At the conclusion of the hearing, I dismissed the application with costs and said I would give my reasons later.

The plaintiff and GSH were practising as advocates and solicitors during the period from 1 July 1971 up to December 1984 in the firm of Messrs ASK Wee. GSH left the firm as a result of certain tax investigations made against the plaintiff. In suit no 8521, the plaintiff commenced proceedings against GSH claiming the sum of $246,410.33, being the total amount taken out by GSH allegedly as his share of the profits of the firm when he was only an employee, and the sum of $96,000 being excess salary taken out by GSH. In his defence, GSH has maintained that he was a partner during the material period and that he had not taken out any money wrongfully from the firm. He has also counterclaimed for an account and inquiry in respect of the partnership assets and for payment of his share of the profits of the firm. TKQ, a partner in Messrs Lee & Lee, represent GSH in these proceedings, which are pending.

In O 14 proceedings in suit no 8521 of 1985, GSH on 28 November 1985 swore an affidavit in which he deposed in para 19 thereof that the plaintiff had received payment in cash or kind from clients for which no proper bills had been rendered and no proper receipts had been issued or which had been paid to him over and above the amount of costs shown on the bills delivered. GSH listed out the names of five clients who, he deposed, had alleged they had been involved in such payments.

The plaintiff has denied the said allegations in an affidavit, the relevant paragraph (ie para 13) of which reads:

> as regards para 19 ..., a very grave libel has been committed against me by those concerned and appropriate action is on foot. The persons referred to in para 19(2), (3), (4) and (5) have sworn/affirmed their categorical denials of the defendant's allegations against me. In so far as [the first named client] is concerned, I annex hereto ... an exchange of letters which clearly shows that the defendant was aware that the question of costs was never settled and therefore that I had improperly received substantial sums of moneys from [the client] in the manners alleged is as untrue as it is malicious.

The affidavits of the four named clients denying GSH's allegations were filed for the purpose of the said application.

On 17 November 1987, the plaintiff lodged a complaint with the Law Society and requested an investigation into the conduct of GSH and TKQ. The substance of the complaint was:

(1) That both Goh Soon Hock and his solicitor made them [ie the allegations] recklessly not caring whether they are true or false with the view to smearing me with the stigma of my having committed a criminal offence with the consequence that I had cheated Goh Soon Hock out of his share of the costs.

(2) Tan Kok Quan had failed to take reasonable steps to take statements from the named clients or to verify the source of information before permitting the said affidavit to be sworn before a commissioner for oaths and before filing and service.

The Law Society referred the complaint to the chairman of the inquiry panel on 25 November 1987 and informed the plaintiff on the same day. On 8 January 1988, the Law Society wrote to the plaintiff to inform him that the Council had accepted the report of the inquiry committee that the complaint did not merit a formal investigation by a disciplinary committee. The complaint was accordingly dismissed.

On 2 February 1988, the plaintiff requested the Council under s 84(3) of the Act to furnish him in writing the reasons for the dismissal of the complaint. On 4 February 1988, the Law Society, by letter, informed the plaintiff of the reasons which were as follows:

First respondent (Mr Goh Soon Hock)

(1) The committee was of the view that having regard to the fact that not only civil but also criminal proceedings are pending in which the very matters complained of in the affidavit are in issue, a disciplinary inquiry into this complaint would be premature. You are not precluded from making a complaint upon the conclusion of these proceedings if subsequent circumstances so warrant.

(2) The committee was of the view that the first respondent swore the affidavit as a litigant (rather than as a solicitor). The committee did not consider that it was the correct forum to verify the correctness, accuracy or otherwise of the various statements made in the said affidavit. Having regard to the pending civil and criminal proceedings to which the first respondent is a party, the committee did not consider it appropriate that the first respondent should be called to substantiate or explain before it or a disciplinary committee the statements made by him in his capacity as a litigant, which might require him to reveal the evidence he was relying upon. To do so may well be prejudicial to the first respondent's case in either the civil or criminal proceedings.

Second Respondent (Mr Tan Kok Quan)

(1) The second respondent has explained that he did not prepare the said affidavit which was prepared by the first respondent himself without any assistance from the second respondent's firm. The second respondent was on leave when the said affidavit was received by his office.

(2) The committee was of the view that there was no evidence that the second respondent acted recklessly as alleged. The second respondent was merely acting on instructions and even if he was personally responsible for the filing of the said affidavit, there was nothing he did which suggested that he had acted otherwise than in accordance with his professional duties.

(3) The committee was of the view that in the circumstances the second respondent was not under any duty to take statements from persons named in the affidavit or to verify the source of information. He was relying upon his client's instructions, as he was entitled to do. There was nothing to suggest that in acting as he did the second respondent was being influenced by any improper considerations.

The plaintiff, being dissatisfied with the Council's determination, commenced the present proceedings. The plaintiff's grounds as set out in his affidavit filed on 15 February 1988 were as follows:

(1) with regard to GSH
   (a) that any prejudice caused to GSH in pending civil and criminal proceedings (initiated by the plaintiff against GSH) by an investigation of the complaint by the inquiry committee was not a sufficient reason for not inquiring into the complaint;
   (b) that GSH, being an advocate and solicitor, was professionally liable for having admitted making false and criminal allegations against the plaintiff.

(2) with regard to TKQ
   (a) the fact that TKQ did not prepare GSH's affidavit or that the affidavit was received by his firm in his absence or filed in his absence did not absolve him from liability 'for the reasons that he was a solicitor in charge of the matter and that he neglected to take steps before or subsequently to verify or rectify the matter when the false allegations were first transmitted to his office or subsequently brought to his knowledge and attention';
   (b) that it was TKQ's professional duty to see to it that affidavits containing serious criminal allegations against the applicant, a fellow member of the Law Society, were not filed until he had verified the allegations from the named clients.

The first ground relied on by the plaintiff concerning GSH was ambiguous. It could mean (1) that the inquiry committee had a duty to inquire into the complaint and had no discretion to postpone or defer it or (2) that the inquiry committee had a discretion not to inquire into the complaint but had exercised its discretion not to do so wrongly.

If the submission were that the inquiry committee had exercised its discretion wrongly, I would have rejected it. There was no basis for contending that the inquiry committee had failed to exercise its discretion properly.

If the submission were that the inquiry committee had failed to perform its statutory duty to inquire into the complaint, and if that were right, a further issue would arise as to whether the Council's determination was correct. It may be recalled that the Council determined that a formal investigation was not necessary. Under s 84(1) of the Act, the Council may make one of four determinations ie:

(a) that a formal investigation is not necessary;
(b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under s 85;
(c) that there should be a formal investigation by a disciplinary committee; or
(d) that the matter be referred back to the inquiry committee, or adjourned for consideration.

If indeed the inquiry committee had acted wrongly in failing to inquire into the complaint, the only determination open to the Council would be to refer the matter back to the inquiry committee for inquiry. However, it is not necessary to decide these two issues in the present application. It may well be that in certain circumstances, eg as in here, where the allegations giving rise to the complaints are already the subject matter of proceedings in the High Court, any investigation by the inquiry committee may amount to an interference with the administration of justice.

The present application was made under s 93 of the Act which provides as follows:

(1) Where a person has made a written application or complaint to the Society and the Council has determined –
   (a) that a formal investigation is not necessary; or
   (b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor concerned should be ordered to pay a penalty,
that person, if he is dissatisfied with the decision, may within 14 days of being notified of the Council's determination apply to a judge under this section.

(2) Such an application shall be made by originating summons and shall be accompanied by an affidavit or affidavits of the facts constituting the basis of the application or complaint and by a copy of the application or complaint originally made to the Society together with a copy of the Council's reasons in writing supplied to the applicant under section 84(3).

(3) The application accompanied by a copy of each of the documents referred to in subsection (2) shall be served on the Society.

(4) At the hearing of the application the judge may make an order –

(a) affirming the determination of the Council; or
(b) directing the Society to apply to the Chief Justice for the appointment of a disciplinary committee, and such order for the payment of costs as may be just.

(5) If the judge makes an order directing the Society to apply to the Chief Justice for the appointment of a disciplinary committee the applicant shall have the conduct of proceedings before the disciplinary committee and any subsequent proceedings before the court under section 95, and any such proceedings shall be brought in the name of the applicant.

Under s 93(4), my jurisdiction is limited to either one of the two orders specified therein, ie (a) affirming the determination of the Council, or (b) directing the Law Society to apply to the Chief Justice to appoint a disciplinary committee. If the Council's determination was wrong, I cannot affirm it. But it does not follow that I can then review the materials before me and make an order under para (b). In my view, s 93(4) does not vest in a judge an original jurisdiction to hear a complaint against an advocate and solicitor. Section 93(4) does not contemplate such a hearing. His jurisdiction is supervisory or appellate in nature. This is apparent from the statutory scheme enacted in Part VII of the Act for the disposal of complaints of professional misconduct made against advocates and solicitors. A complaint must first be investigated by the inquiry committee which then reports its findings and recommendations to the Council. The Council then considers the report and makes a determination. Although the Council has no power to disagree with the inquiry committee's recommendation for a formal investigation by a disciplinary committee, the Council has the power to disagree with a recommendation that a formal investigation is not necessary, in which event the Council may request the Chief Justice to appoint a disciplinary committee. But where the inquiry committee recommends that a formal inquiry is not necessary, and the Council agrees with it and dismisses the complaint, it is only then that the dissatisfied complainant is entitled to apply to a judge to reverse the determination of the Council.

The statutory scheme gives the advocate and solicitor concerned a right to be judged first by his own peers, ie the inquiry committee, followed by a determination by the Council, before the complaint can be brought by a dissatisfied complainant before a judge. Section 93(4) should not be construed in such a manner as to deprive the advocate and solicitor concerned of these rights. In my view, a judge has no jurisdiction to inquire into any complaint which has not been inquired into by the inquiry committee or where the Council has not made a determination on the basis of such an inquiry.

The plaintiff has available to him other remedies against a defaulting inquiry committee or Council, eg an order of mandamus against the inquiry committee or the Council (see *Re An Advocate & Solicitor*[1]) or an declaratory order (see *P Suppiah* v *The Law Society of Singapore*).[2]

This application, in so far as it concerned GSH, was wholly misconceived. It was accordingly dismissed in limine.

The complaint against TKQ was in two parts. The first was that he had made libellous statements against the plaintiff recklessly. The second was that he had failed to take steps to verify the truth of those statements. The inquiry committee found that TKQ had neither prepared GSH's affidavit nor filed it. Since the plaintiff did not and could not challenge these findings of fact, only one determination was open to the Council, which was a dismissal of this part of the complaint. This determination could not be challenged.

In respect of the second part of the complaint, the inquiry committee was of the view that TKQ was under no duty (i) specifically, to take statements from the clients named in GSH's affidavit; (ii) generally, to verify the source of information of GSH. Counsel for the plaintiff was unable to cite any authority to support his contention that an advocate and solicitor has such a duty generally or in the circumstances of this case. Nor was he able to persuade me, in principle, that such a duty existed. In my view, no such duty existed generally or in the circumstances of this case. It is not for an advocate and solicitor, whether in his capacity as counsel or solicitor, to believe or disbelieve his client's instructions, unless he himself has personal knowledge of the matter or unless his client's statements are inherently incredible or logically impossible. His duty to his client does not go beyond advising him of the folly of making incredible or illogical statements.

Here, I would refer to an ex curia opinion of Lord Halsbury on this subject. His Lordship said (as quoted in (1889) 15 LQR at page 264):

> A thesis has been propounded on the other side more extravagant, and certainly more impossible of fulfilment; that is, that an advocate is bound to convince himself, by something like an original investigation, that his client is in the right before he undertakes the duty of acting for him. I think such a contention ridiculous, impossible of performance, and calculated to lead to great injustice. If an advocate were to reject a story because it seemed improbable to him, he would be usurping the office of the judge, by which I mean the judicial function, whether that function is performed by a single man, or by the composite arrangement of judge and jury which finds favour with us. Very little experience of courts of justice would convince any one that improbable stories are very often true notwithstanding their improbability.

Counsel for the plaintiff had also advanced the argument that TKQ, having been appraised of the falsity of GSH's allegations, should have taken steps to withdraw them.

This argument had no substance. Firstly, the falsity or otherwise of these statements had yet to be decided by the court. Secondly, even if the said allegations were false, it did not follow that TKQ had knowledge that they were false. Thirdly, TKQ had no duty to withdraw his client's allegations without his client's consent and there was no allegation, much less evidence, that GSH had consented. Finally, and in any event, this was not part of the complaint that was made against TKQ.

The complaint against TKQ was wholly without merit and accordingly, the determination of the Council was affirmed.

Order accordingly.

Solicitors: *Mak & Partners*; *Goh Poh & Partners*.

Reported by *Ng Sheau Jiuan*

Invar Realty Pte Ltd v JDC Corporation

HIGH COURT (SINGAPORE) – ORIGINATING MOTION NO 36 OF 1987
CHAO HICK TIN JC
11 MAY 1988

Arbitration – Building contract – Dispute – Reference to arbitration by consent – Interim award by arbitrator – Application for leave to appeal against – Application for leave to apply for an order directing arbitrator to give further reasons – Arbitration Act (Cap 10, 1985 Ed), s 28(3b) & (5)(b)

This is an application under s 28(3)(b) of the Arbitration Act (Cap 10, 1985 Ed) for leave to appeal to the High Court against the interim award of an arbitrator made on 25 April 1987.

The applicant (Invar) entered into a building contract with the respondent (JDC) on 20 May 1983 for the construction of a 18-storey building in Singapore. On 28 August 1983, the formal agreement was signed with the respondent (JDC). Liquidated damages were payable if the respondent should fail to complete the work by the date of completion or any extension granted in accordance with the contract. The respondent commenced work in June 1983. On 3 September 1984, it was discovered that owing to no fault of JDC the cantilever beams on certain floors had a deflection problem to such an extent that there would be insurmountable problems in the installation of the curtain wall. As a result, the architect ordered JDC to stop work. The stoppage lasted for 100 days. In response to the architect's request, JDC submitted on 7 January 1985, for completing the project, a revised master programme which was accepted by 'Invar and consultants'. On 31 January 1985, the architect wrote to JDC stating that by virtue of cl 23 of the contract, an extension of time was granted to JDC for a total period of 10½ months from 15 April 1985 (the original completion date) 'which has been agreed on at the meeting held on 9 January 1985 between the owner, consultant and contractor'. The decision of the architect was challenged by Invar. The project was duly completed on 28 February 1986 with the issue of a certificate of practical completion by the architect. However, because of the stand Invar had taken on the question of extension of time for completion, it refused to make payment in respect of two interim certificates, and it claimed to be entitled to deduct for liquidated damages from moneys due to JDC for late completion.

The parties agreed to submit the dispute to arbitration according to cl 34 of the contract and by consent Mr Goh Joon Seng, a senior advocate and solicitor, was appointed arbitrator.

The arbitrator gave the following awards:

(i) $1,860,319 being the amounts with interest at 6% per annum from date of reference to arbitration to date of payment.
(ii) $3,132.092.45 taking into account the sum of $1,980,412 paid by way of interim award on 10 April 1987 with interest at 6% per annum thereon or balance thereof from 8 October 1986 to date of payment.
(iii) The respondent shall pay the claimants' (JDC) costs on this preliminary issue on a party and party basis. The arbitrator's fees including the costs of the award to be borne by the respondents (Invar).

Against the above award, Invar asks for leave of court to appeal.

Held, dismissing the application: (1) A party who wishes to preserve his right of appeal should ask for a reasoned award before the award is made.

(2) The application by Invar for leave to appeal under s 28(3)(b) of the Arbitration Act is refused with costs.

(3) The application under s 28(5)(b) for leave to apply for an order directing the arbitrator to give further reasons is also refused with costs.

Cases referred to
1 *The Nema* [1981] 2 Lloyd's Rep 239 (folld)
2 *Antaios Compania Naviera SA* v *Salen Rederierna AB* [1985] AC 191 (refd)
3 *Trave Schiffahrtsgesellschaft* v *Ninemia Maritime Corporation* [1986] 2 WLR 773 (folld)
4 *The Dynashinky* [1986] 1 Lloyd's Rep 435 (refd)
5 *Warde* v *Feedex International Inc* [1984] 1 Lloyd's Rep 310 (distd)

Legislation referred to
Arbitration Act (Cap 10, 1985 Ed) s 28
Arbitration (Amendment) Act 1980
UK Arbitration Act 1979 s 1

Richard Fernyhough QC (*Lim Chor Pee* with him) for the applicant.
CS Wu (*Tan Tee Jim* with him) for the respondent.

Cur Adv Vult

Chao Hick Tin JC: This is an application under s 28(3)(b) of the Arbitration Act for leave to appeal to the High Court against the interim award of an arbitrator made on 25 April 1987.

The background to the case is as follows. The applicant (Invar) entered into a building contract with the respondent (JDC) on 20 May 1983 for the construction of a 18-storey building at Cecil Street, Singapore. The formal agreement was signed on 28 August 1983. The con-